



Received & Inspected

JAN 23 2012

FCC Mail Room

January 19, 2012

To: Secretary, Federal Communications Commission

From: Roger Clegg, President and General Counsel, Center for Equal Opportunity RC

Re: Comment regarding 77 FR 2868, FEDERAL REGISTER, Vol. 77, No. 012, Proposed Rules, FEDERAL COMMUNICATIONS COMMISSION (FCC), 47 CFR Part 73, [MB Docket Nos. 09-182 and 07-294; FCC 11-186], 2010 Quadrennial Regulatory Review

In our respectful view, we believe that sound law and policy both prohibit any classification, preference, discrimination, or consideration of race, ethnicity, or sex in FCC policy, including in this particular matter. See earlier comments, appended.

Enclosures

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List ALCDR

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From: Roger Clegg [mailto:rclegg@ceousa.org]

Sent: Friday, June 25, 2010 10:22 AM

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Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 2010625325864 Proceeding

Name	Subject
09-182	Media Bureau announces workshop details and seeks comment in ITS 2010 Media Ownership review proceeding.

Contact Info

Name of Filer: Roger Clegg

Email Address: rclegg@ceousa.org

Address

Address Line 1: Center for Equal Opportunity

Address Line 2: 7700 Leesburg Pike, Suite 231

City: Falls Church

State: VIRGINIA

Zip: 22043

Comment This is with regard to the 2010 Quadrennial Regulatory Review

(http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-92A1.pdf); please redirect this if it has been sent to the wrong location. Re paragraph 75 (discussing, inter alia, racial diversity): In our view, the dissent in the Supreme Court's 1990 Metro Broadcasting decision should be treated as the controlling law, in light of the Court's subsequent 1995 decision in *Adarand Constructors v. Peña*, overturning *Metro*. Accordingly, preferences based on race and ethnicity are unconstitutional; in all events, they are unfair, divisive, and unnecessary to achieve programming diversity. Disclaimer

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From: Roger Clegg [mailto:rclegg@ceousa.org]

Sent: Wednesday, February 02, 2011 9:36 AM

<http://fjallfoss.fcc.gov/ecfs/upload/confirm?token=1woipr1g3ozn81qv18zv5w6sjg>

February 2, 2011

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 201122681358 Proceeding

Name	Subject
10-244	Media and Wireless Telecommunications Bureaus seek comment on Recommendation of the Advisory Committee on Diversity for Communications in the Digital Age for a new Auction Preference for overcoming Disadvantage.

Contact Info

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Comment: This is acceptable, so long as there is no presumption made that certain racial, ethnic, or gender groups are entitled to a credit on the grounds that they have suffered discrimination and, accordingly, have "overcome substantial disadvantage." Such a presumption would amount to a classification and preference on the basis of race, ethnicity, or sex, which is presumptively unconstitutional. See *Adarand Constructors v. Peña* (1995), *Mississippi University for Women v. Hogan* (1982), *Personnel Administrator v. Feeney* (1979). The showing of overcoming substantial disadvantage in 2011 must be done on an individual basis, and all applicants should be treated without regard to race, ethnicity, or sex. If the new credits cannot be treated in a nondiscriminatory way, then they should not be awarded at all. (We note that, as the notice says, there is already attention given to groups that have historically been discriminated against, and the constitutional and fairness problems raised by adding a (second) layer of preference to the process would outweigh any benefits to improving communications policy.) Disclaimer

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